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REMARKS

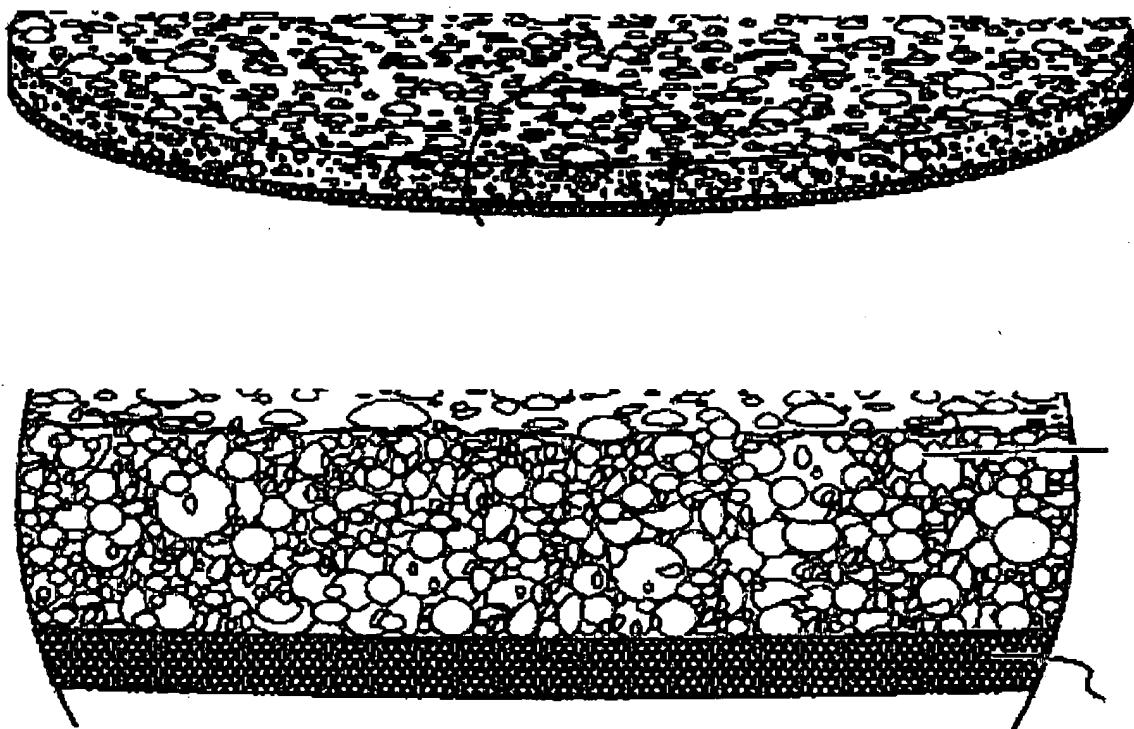
Claims 39, 40 and 43 were pending in the application as of the last Office Action.

The examiner rejected claims 39 and 40 under 35 U.S.C. §112 on the basis that the limitation "a particulate layer... is at least two particulate particles thick" is unsupported in the specification. The examiner supports this rejection by stating that the specification lacks discussion of thickness and particle size. The examiner also states on page 3 of the Office Action mailed 7/27/2006 that "figure 9 shows that the particle layer is discontinuous and sometimes not even show one particle thick." Applicant has amended independent claims 39 and 43, and added claims 44 and 45.

Applicant respectfully responds that the particle layer must be "discontinuous", because any layer that is more than one particle thick has particles that are disconnected. If something has multiple particles across its thickness, one would expect the particles to be "discontinuous", because any group of "particles" (defined as "the smallest discrete portion or amount of something") is discontinuous. Indeed, if they were not (i.e., if they were "continuous" across the thickness), then there would only be one particle across the thickness. But that is not how Fig. 9 illustrates the invention.

A person having ordinary skill can see, when looking at Fig. 9, that across the thickness of the Fig. 9 structure there are multiple discrete particles. The examiner's statement that the layer of Fig. 9 is "sometimes not even... one particle thick" is unsupported. Viewing the edges of the structure in Fig. 9, one cannot find a single point at which one of the particles spans the thickness of the structure. To the contrary, at every point around the edge of the structure where particles are shown, at least two of the

particles are required to span the thickness of the structure. The relevant portions of the illustration are reproduced below.



The examiner stated, in response to Applicant's arguments, that "she cannot distinguish the particles from the matrix." Applicant responds that it is not relevant for the purposes of §112 what the examiner can distinguish from the illustration. It is only relevant whether the application as filed conveys to a person of ordinary skill that the inventor had possession of the invention. And there is no evidence that the Fig. 9 drawing does not convey to a person of ordinary skill that the limitation at issue was in Applicant's possession.

Additionally, a matrix is "something within... which something else... takes form". Thus, the matrix of the invention is the material that the particles are surrounded by and which gives form to the claimed flooring unit. As noted in paragraph [0017], the matrix for the instant invention can be "a conventional translucent or transparent two-part epoxy resin and hardener...." This matrix material coats the stones, as noted in paragraph [0038] ("stones coated with epoxy resin") when they are mixed together. Thus, each of the stones, after being mixed with the resin, such as in a conventional mortar mixer (see paragraph [0023]), is connected to each adjacent stone by the transparent or translucent resin that coats the stones. This matrix material is not easily distinguished from the particulate 102 in Fig. 9, but the particles are readily seen. It is clear from the specification which structures are the particles 102, and it is clear from the specification that the particles 102 are connected to each other and to the surrounding structures, such as the fibers, by the transparent or translucent resin that coats the particles. Thus, the limitation to the particulate layer being at least two particles thick is supported by Fig. 9, since Fig. 9 clearly illustrates plural particles 102 across the thickness, and nowhere shows the structure fewer than two particles thick. Whether the matrix is separately illustrated has no bearing on whether the structure is at least two particles thick.

The examiner also rejected claims 39 and 40 under 35 U.S.C. §102 as being anticipated by Sweeney. Claims 39 and 43 have been amended to recite a "polymer" matrix material, as distinguished from Sweeney's cementitious slurry binder (see Sweeney: column 2, lines 38-44). This limitation is supported by Applicant's

specification at paragraph [0017]. Claim 43 also recites a thickness substantially less than the 2-1/2 inches of Sweeney (column 3, line 48; column 4, lines 22 and 26). Applicant further recites a weight that can be lifted by a human, and the examiner states that a 225 pound panel that is four feet wide and eight feet long can be lifted by a human. No evidence is presented for this statement, and it seems unsupportable. Thus, amended claims 39 and 43 are allowable over the Sweeney reference.

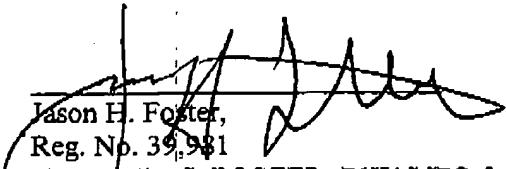
Additionally, Applicant has added claims 44 and 45, which limit the particulate material to sand, soil, gravel and a combination thereof, as supported in the specification at paragraph [0020]. Sweeney's particulate is waste plastic material (see column 2, lines 31-35). Such material will not provide a sufficient low-friction bearing surface, as sand, soil and stone provide on a flooring unit. Thus, Sweeney does not anticipate the amended claims. Therefore, reconsideration and allowance are respectfully requested.

The examiner is authorized to communicate with the undersigned attorney by email by the following recommended authorization language: Recognizing that Internet communications are not secure, I hereby authorize the USPTO to communicate with me concerning any subject matter of this application by electronic mail. I understand that a copy of these communications will be made of record in the application file.
(authorization pursuant to MPEP 502.03)

The Commissioner is authorized to charge Deposit Account No. 13-3393 for any insufficient fees under 37 CFR §§ 1.16 or 1.17, or credit any overpayment of fees.

Respectfully submitted,

27 November, 2006
Date of Signature


Jason H. Foster,
Reg. No. 39,981
KREMBLAS, FOSTER, PHILLIPS & POLICK
7632 Slate Ridge Blvd.
Reynoldsburg, OH 43068
Voice: 614/575-2100
Fax: 614/575-2149
email: jfoster@ohiopatent.com

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